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SENATE

REPORT
100-579

PROVIDING FOR FEDERAL RECOGNITION FOR THE LUMBEE TRIBE OF NORTH CAROLINA

SEPTEMBER 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2672]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2672) having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE

S. 2672 provides Federal recognition to the Lumbee Tribe of North Carolina and makes applicable to the Lumbee Tribe and its members all laws that are generally applicable to Indians and Indian tribes. After certification by the Department of the Interior of the tribal roll, members will immediately be eligible for federal services but services will be delivered only after specific appropriations for the tribe are made by Congress. The bill requires the tribe to organize under a constitution and bylaws for its common welfare. The Secretary will review the tribe's membership roll and verify its compliance with the tribe's membership criteria as stated in the tribe's Petition for Federal Acknowledgment filed in December 1987. The State of North Carolina, pursuant to the terms and conditions of P.L. 93-280, will exercise civil and criminal jurisdiction over the members and lands of the tribe.

BACKGROUND

About 38,000 Lumbee Indians are enrolled in the Lumbee Tribe with over 90 percent of these members residing in Robeson County, North Carolina and adjacent counties. It is the largest group of In-

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dians in the United States that is not officially recognized by the United States. Ethnologists are in agreement that the tribe descends primarily from the Cheraw Tribe, a Siouan speaking tribe first encountered by Europeans in 1524. In 1914, Special Indian Agent O.M. McPherson, sent to investigate the history and condition of the tribe, concluded that the tribe was descended from the Cheraw Tribe. In 1934, John Swanton of the Bureau of Ethnology, agreed that the Lumbees were descended from the Cheraw Tribe. At this Committee's hearing on S. 2672 held on August 12, 1988, Dr. Jack Campisi, the tribe's ethnohistorian, and Dr. William Sturtevant, general editor of the Smithsonian Institution's "Handbook of North American Indians", confirmed the Cheraw origins of the Lumbee Tribe. Dr. Sturtevant, acknowledged as the leading anthropologist specializing in American Indians, also observed that anthropologists are of the unanimous view that the Lumbees constitute an Indian tribe.

Throughout the 1700's, many references are found in newspapers and other accounts to an Indian community, sometimes designated a Cheraw community, along "Drowning Creek", now called the Lumber River from which the tribe draws it present name. Many of the surnames of current tribal members are traced to ancestors of this period. Because of the precarious position of Indians in the early 1800s with the removal of many tribes to Oklahoma, the Indians of Robeson County became quiet about their Indian identity. However, incidents during and after the Civil War showed much activity in the Indian community, including recognition by local governmental authorities of this community as an Indian community. The major Lumbee folk hero, Henry Berry Lowrie, led a rebellious band at the close of the War until his disappearance in 1872. His memory is honored each summer when the Lumbees put on their outdoor drama titled "Strike at the Wind".

Lumbee history since the Civil War shows the continuous existence of a distinct Indian community with its own leaders who aggressively defend Lumbee interests. In 1885, the State of North Carolina recognized the tribe and established a separate school system for Lumbee children. Enrollment in the school was restricted to Lumbee children who could demonstrate Lumbee descent four generations back, or into the 1770's, with Lumbee leaders authorized to determine eligibility to enroll. These enrollment records, along with federal census records, form the base roll from which all present day tribal members must demonstrate descent. On March 26, 1913, the State's Attorney General Bickett issued an opinion that the county board of education could overrule decisions of the Lumbee leaders as to eligibility for enrollment in the Lumbee schools. The Lumbees objected to this infringement on their independence and under pressure from the Lumbee leadership, the State of North Carolina enacted legislation in 1919 that set aside the Attorney General's opinion. The Indian Normal School established under authority of the 1885 state statute is today Pembroke State University.

Witnesses at the Committee's hearing presented as the best known example of Lumbee leadership in this century a confrontation between the tribe and the Ku Klux Klan in 1958. The Klan publicly announced its intention to hold a rally in the Indian com-

munity and Lumbee leadership warned against the rally. The Klan nonetheless proceeded and the Lumbees gathered and routed the rally. The incident received nationwide publicity.

Most recently, Lumbee leaders have fought against what the Lumbees see as local governmental bias and violence against Lumbee people. In 1986, an unarmed tribal member was killed by a local sheriff. The investigation, perceived by the Lumbee Indian community as pro forma, led to an unfortunate hostage situation that brought national attention to the Lumbees again in February 1988. Tragically, this was followed just a few months later by the murder of Julian Pierce, an Indian attorney running for a judgeship who also was the principal leader in the tribe's effort to achieve recognition. Tribal leaders explained to the Committee that this legislative proposal is inspired, at least in part, by these recent events.

The contemporary Lumbee community is closely bound together by extensive and overlapping kinship ties and the strong sense of Robeson County and environs as "home". Other Indian institutions, including all Indian churches, a newspaper, an annual homecoming, and predominantly Indian schools, serve to further bind the Lumbees together in a distinct community. In summary, the historical record provided to this Committee is persuasive and compelling that for the last two hundred years the Lumbees have functioned as an Indian tribe and have been recognized as such by state and local authorities.

The Lumbees first petitioned the Congress for federal recognition in 1888. Since then the tribe has made numerous attempts to achieve recognition of their status as Indians from the United States, including attempts that were made in 1899, 1910 and 1912. In 1914 an Indian Office investigation, carried out at the direction of the Senate, found that Lumbees were eligible to attend Federal Indian schools. Again in 1924, the tribe sought Congressional support, as well as in 1932 and 1933. The reports and studies done by the Department of the Interior on the tribe's history and condition in response to these bills fully document the Department's extensive knowledge about and experience with the Lumbee Indians. These bills generally tracked and followed upon state legislation which had been enacted recognizing the tribe under a particular name and in some cases extending certain services to the tribe. But in each instance, the federal legislation failed. Always, the economic effects of recognition seemed to be the genesis for denial of federal recognition.

In 1956, the tribe succeeded in obtaining federal legislation. As introduced, the federal bill tracked verbatim the most recent state legislation recognizing the tribe which has been enacted in 1953. The 1953 state legislation was and is accepted by the State of North Carolina and the tribe as recognition legislation. The identical federal bill was intended by the tribe to have the same legal effect. The tribe's historian testified that the tribe plainly intended and understood the federal bill to be recognition legislation, evidenced by the hundred year history of the tribe's efforts to obtain federal recognition legislation upon the heels of and in the same terms as state recognition legislation.

Excerpts from the legislative history of the 1956 act support the view that the federal bill had the same purpose as the earlier, identical state legislation, i.e., recognition of the tribe. Senator Scott, the sponsor of the 1956 bill, testified in support of the bill before a Senate subcommittee that, "The State of North Carolina has already by state law recognized the Lumbee Indians under that tribal name * * * Giving official [federal] recognition to the Lumbee Indians means a great deal to the 4,000 Indians involved * * *" [1] And during Congress' consideration of the bill, it was widely reported as a recognition bill. Contemporaneous newspaper clippings reporting the bill as such appear at the end of the report.

Other excerpts from the legislative history indicate that the Congress did not intend to take on any obligation to provide Indian services to the tribe by the bill. In a colloquy on the House floor, the House sponsor of the bill assured another member that the bill simply provided for a name change with no cost or obligation on the part of the government. See 101 Cong. Rec. 1900, February 20, 1956. Indeed, before enacted, the 1956 bill was amended to add a final sentence which reads: "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians." 70 Stat. 255. This amendment was apparently necessary in the view of the Department of the Interior to insure that this recognition bill did not obligate the United States to provide services to the tribe. See Comment of Assistant Secretary of the Interior, H. Rep. No. 1654, 84th Cong., 2d Sess. However, the restriction on eligibility for services does not, by itself, affect the intent to reocognize the tribe. The 1953 state act had not provided for services and yet it was and is accepted as recognition legislation.

It should also be noted that the 1956 Lumbee Act was the model for one other act of Congress, i.e., the 1968 act relating to the Tiwa Indians of Texas. See 82 Stat. 93. The legislative history of the 1968 Tiwa act explicitly states that the 1956 Lumbee Act was the model for the Tiwa legislation. See H. Rep. No. 1070, 90th Cong., 2d Sess. In 1987, the Congress extended full federal recognition to the Tiwas and in doing so, acknowledged that the 1968 Tiwa Act had recognized the Tiwas. See S. Rep. 100-90, 100th Cong., 1st sess. If the 1968 Tiwa Act recognized the tribe, then its model—the 1956 Lumbee Act—must have as well. The American Law Division of the Library of Congress interpreted the 1956 Lumbee Act as recognizing the Lumbees as Indian, but noted that insufficient documentation existed to determine if the statute effects federal recognition

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[1] The tribal population given by Senator Scott in his statement before the Senate subcommittee was repeated in the House and Senate reports on the legislation. See H. Rep. No. 1654, 84th Cong., 2d sess; S. Rep. 84-2012, 84th Cong., 2d sess. This figure was in error. According to a correction to the figure by contemporaneous newspaper accounts of the statement, the Senator intended to refer to 4,000 Indian families, not 4,000 individual Indians. The total tribal population isn 156 was given in this account as 27,726. This conclusion is consistent with data in the 1950 census.

of the Lumbees without a court ruling on the issue. The text of this opinion follows this report.

Concern has been expressed that passage by Congress of the bill to recognize the Lumbee Indian Tribe of North Carolina would be unfair to other tribes who are also seeking recognition through the Branch of Acknowledgment and Research (B.A.R.). The Committee held an oversight hearing on B.A.R. in May 1988 and it is clear from that hearing that the office charged with the responsibility in the Bureau of Indian Affairs for handling acknowledgment petitions is over-burdened and badly understaffed. It would also appear that the processes and criteria developed over the years may also be impeding the ability of the Bureau to handle these petitions with any degree of dispatch.

At that hearing Hazel Elbert, Deputy to the Assistant Secretary for Indian Affairs, testified that there are some 83 petitioners, 57 of which have submitted no documentation and 26 with documented petitions that are awaiting consideration or are in the preliminary review process. She indicated that the entire process may take 3 or 4 years from the time the group begins its research. In fact, there is reason to believe the process may take twice this length of time.

The Committee has often met with resistance from the Department of the Interior and OMB to legislation which does not defer to the B.A.R. process. In particular this resistance has been encountered with respect to legislation to resolve extensive land claims along the Eastern seaboard. An example of this is legislation sponsored by Senators Kennedy and Kerry and passed by the Congress last year to settle the claims of the Gay Head Wampanoag Tribe in Massachusetts to lands on Martha's Vineyard. Efforts to resolve this in the 99th Congress were thwarted by the promise of a veto if the legislation included recognition of the tribe. That tribe ultimately achieved recognition through the B.A.R. process, and the subsequent settlement bill was signed into law.

In recent years, in non-claim situations, the Committee has only been succesful in moving recognition legislation in situations where an Indian group would clearly be denied access to the B.A.R. petitioning process. Examples of this are the Pascua Yaqui Tribe which, having migrated from Mexico, was not indigenous to the United States and therefore ineligible to file a petition; and tribes such as those in Oregon which had been the subject of legislation terminating the Federal relationship, or tribes such as those in Texas which were the subject of legislation transferring jurisdiction to the State, and therefore deemed ineligible to file a petition for Federal recognition.

In this Congress, legislation has provided for the separate recognition of the Lac Vieux Desert Band of Chippewa Indians in Michigan. This was a group already recognized by the Department of the Interior as a part of another tribal entity and already receiving some Federal services on the basis of their status as members of a Federally recognized Indian tribe. The Bureau of Indian Affairs testified that the group was not eligible to be considered under the B.A.R. process and for this reason supported the legislative recognition. The tribe was also unanimously supported by the 29

other tribes in the local inter-tribal council, including the tribe from which it was separating.

It is clear that under some circumstances, recognition of a tribe is an issue that the Congress should address. Congress plainly has the Constitutional authority to recognize tribes. In fact, the overwhelming majority of the presently recognized Indian tribes were recognized by Congress either through treaty or statute. The present administrative acknowledgment process was established under general authority delegated by the Congress to the Department of the Interior, but there is no specific statutory authority for the process. Hence, the substantive criteria applied in the present administrative process and the procedures used by the Department in processing petitions are wholly administrative in origin. Obviously, Congress is not bound by those administrative criteria or procedures in determining whether to extend recognition to a particular tribe. Congress may take the administrative criteria into consideration along with a number of other factors, such as the general view of anthropologists and other experts, whether the tribe was ever recognized by Congress by treaty or statute, and the overall history and condition of the tribe. This Committee is persuaded that Congress is competent to weigh these factors and determine whether the particular circumstances justify treating the tribe outside the administrative acknowledgment process.

There are a number of reasons why S. 2672, the legislation to amend the 1956 Lumbee Act and extend full recognition to the Lumbee Tribe of North Carolina, is appropriate and presents a special case: (1) the Lumbee Indians were recognized by Congress through legislation in 1956, although services and the applicability of general Indian statutes were denied; (2) because of the final sentence of the Lumbee Act precluding the applicability of general Indian statutes, the Lumbee Tribe may fall outside the scope of the B.A.R. process which was established under authority of general Indian statutes; (3) the tribe has been officially and continuously recognized by the State of North Carolina since 1885 and unofficially since the 1830s and, as such, presently receives all federal benefits available to Indian tribes except those administered by the Bureau of Indian Affairs and the Indian Health Service; (4) the tribe has been studied extensively by anthropologists and historians during the 20th century and is widely regarded as a tribe entitled to be federally recognized; (5) the tribe first petitioned Congress for recognition in 1888, long before there was an official B.A.R. process imposed by the Administration, and the tribe has repeated its petitions a number of times over the past 100 years only to be turned down for economic reasons; and (5) because of the size of the Lumbee Tribe, the B.A.R. is not adequately staffed or able to process the Lumbee petition within the time frame of the B.A.R. regulations. For these reasons, the enactment of legislation extending full recognition and services to the Lumbee Tribe is appropriate, just as Congress did in 1987 with the Ysleta Del Sur Pueblo, previously known as the Texas Tiwas.

The Lumbee Tribe has played an extensive role in Indian affairs over the past years, and it has received substantial support from Indian leaders throughout the country, including the National Con-

gress of American Indians, and from some, but not all, of the tribes within the United South and Eastern Tribes (USET) organization.

Legislative History

S. 2672 was introduced by Senator Sanford on July 29, 1988, and referred to the Senate Select Committee on Indian Affairs. The Committee held a hearing on August 12, 1988.

In the House, Representative Rose introduced H.R. 5042 on July 14, 1988. The bill was referred to the House Interior and Insular Affairs Committee, which held a hearing on H.R. 5042 on August 11, 1988.

Committee Recommendation and Tabulation of Vote

The Select Committee on Indian Affairs, in open business session on September 29, 1988, with a quorum present, by a voice vote, recommends the Senate pass S. 2672, as amended in the nature of a substitute. Senator Murkowski and Senator Daschle asked to be recorded in opposition.

Section-by-Section Analysis of S. 2672

Section 1 titles the bill the "Lumbee Recognition Act".

Section 2 amends the preamble to the Act of June 7, 1956 by incorporating Congressonal findings that the Lumbee Indians of Robeson County, North Carolina: (1) are descendants of North Carolina Indian tribes, mainly Cheraw; (2) have been recognized by the State of North Carolina since 1885; (3) have sought federal recognition since 1888; and (4) are entitled to federal recognition as a distinct Indian community.

Section 3 amends the 1956 Act by striking section 2 and inserting the following new provisions to that Act: A new section 2 provides for federal recognition of the Lumbee Tribe of Cheraw Indians of North Carolina and for application to such tribe of all federal laws of general application to Indians and Indian tribes.

A new section 3 (a) provides that members of the Lumbee Tribe of Cheraw Indian of North Carolina are entitled to federal services when funds are appropriated for such services and that members of the tribes residing in Robeson County and adjoining counties will be deemed to be resident on or near an Indian reservation. This section is intended to delay the delivery of Bureau of Indian Affairs and Indian Health Services only to the tribe, pending the appropriation of funds to pay for such services. It is not intended to affect those programs and grants which the tribe now receives from other federal agencies because of its status as a state recognized Indian tribe.

Subsection (d) provides that, upon verification of a tribal roll under section 5 by the Secretary of the Interior, the Secretary of the Interior and the Secretary of Health and Human Services shall develop budgets to provide services to members of the tribe.

Subsection (c)(1) provides that the tribe shall administer funds provided through the Secretary of the Interior through a direct

funding agreement by the Secretary and the tribe, in lieu of contracting under the Self-Determination Act.

The new section 4(a) provides that the Lumbee Tribe of Cheraw Indians will organize and adopt a constitution and bylaws consistent with this Act which will take effect after being filed with the Secretary and that the Secretary will assist the tribe in all these matters.

Subsection (b) provides that until the tribe adopts a constitution, its membership will consist of all individuals named in the tribal membership roll which is in effect on the date of enactment of the Act. Secretarial review of the membership roll in limited to verifying compliance with the tribal membership criteria as stated in the Lumbee Petition for Federal Acknowledgment filed with the Secretary; such review must be completed within 12 months after date of enactment of the Act. This provision effectively adopts as federal law the present membership criteria of the tribe, as set out in the Lumbee Petition for Federal Acknowledgment.

The new section 5(a) provides that the State of North Carolina may not exercise civil and criminal jurisdiction over Lumbee Indians in Indian country without the consent of the tribe. The intent of this provision is to maintain the status quo with respect to jurisdication, with the possibility that the receiving some Federal services on the basis of their status as members of a Federally recognized Indian tribe. The Bureau of Indian Affairs testified that the group was not eligible to be considered under the B.A.R. process and for this reason supported the legislative recongnition. The tribe was also unanimously supported by the 29 other tribes in the local inter-tribal council, including the tribe from which it was separating.

It is clear that under some circumstances, recognition of a tribe is an issue that the Congress should address. Congress plainly has the Constitutional authority to recognize tribes. In fact, the overwhelming majority of the presently recognized Indian tribes were recognized by Congress either through treaty or statute. The present administrative acknowledgment process was established under general authority delegated by the Congress to the Department of the Interior, but there is no specific statutory authority for the process. Hence, the substantive criteria applied in the present administrative process and the procedures used by the Department in processing petitions are wholly administrative in origin. Obviously, Congress is not bound by those administrative criteria or procedures in determining whether to extend recognition to a particular tribe. Congress may take the administrative criteria into consideration along with a number of other factors, such as the general view of anthropologists and other experts, whether the tribe was ever recognized by Congress by treaty or statute, and the overall history and condition of the tribe. This Committee is persuaded that Congress is competent to weigh these factors and determine whether the particular circumstances justify treating the tribe outside the administrative acknowledgment process.

There are a number of reasons why S. 2672, the legislation to amend the 1956 Lumbee Act and extend full recongnition to the Lumbee Tribe of North Carolina, is appropriate and presents a special case: (1) the Lumbee Indians were recognized by Congress

through legislation in 1956, although services and the applicability of general Indian statutes were denied; (2) because of the final sentence of the Lumbee Act precluding the applicability of general Indian statutes, the Lumbee Tribe may fall outside the scope of the B.A.R. process which was established under authority of general Indian statutes; (3) the tribe has been officially and continuously recognzied by the State of North Carolina since 1885 and unofficially since the 1830s and, as such, presently receives all federal benefits available to Indian tribes except those administered by the Bureau of Indian Affairs and the Indian Health Service; (4) the tribe has been studied extensively by anthropologists and historians during the 20th century and is widely regarded as a tribe entitled to be federally recognized; (5) the tribe first petitioned Congress for recognition in 1888, long before there was an official B.A.R. process imposed by the Administration, and the tribe has repeated its petitions a number of times over the State of North Carolina and the tribe may seek cession of some or all of state jurisdiction over the tribe to the United States.

Subsection (b) provides that the Secretary may take lands into trust for the tribe and its members in Robeson County and adjoining counties. For purposes of statutes regulating such acquisitions and providing loans, grants, or other funding for such acquisitions, the boundaries of Robeson and adjoining counties shall be deemed the equivalent of reservation boundaries.

The new section 6 authorizes appropriation of such funds as may be necessary, with the proviso that in the first fiscal year that funds are appropriated, the appropriate House and Senate authorizing Committees will have 60 days to review the tribe's spending proposals.

Cost and Budgetary Considerations

The cost estimate of S. 2672, as amended, as evaluated by the Congressional Budget Office, is set forth below:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 30, 1988.

Hon. Daniel K. Inouye,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2672, the Lumbee Recognition Act, as ordered reported by the Senate Select Committee on Indian Affairs, September 29, 1988.

This bill would grant federal recognition to the Lumbee Indian Tribe of North Carolina. It would make the tribe and its members eligible for all services and benefits provided to federally recognized Indians, and would make them entitled to such services and benefits upon the appropriation of funds for this purpose.

In addition, the bill would require the Secretary of the Interior and the Secretary of Health and Human Services to develop a needs determination and budget for services for the tribe. It would also require the Secretary of the Interior to review and verify the

tribal membership roll within 12 months after enactment, and to assist the tribe in organizing and in drafting and adopting a constitution and bylaws. The bill authorizes such funds as may be necessary to carry out this legislation.

Estimates of the size of the potential membership of the tribe range from 36,000 to around 40,000. Based on the average annual cost of services and benefits provided to eligible Indians ($2,500–$3,000 per person), CBO estimates that enactment of this legislation would result in additional costs to the federal government for services and benefits of between $90 million and $120 million per year, assuming appropriation of the necessary sums. The amount is difficult to predict because the nature of the services and programs would be negotiated by the tribe and the Secretary of the Interior and would be based on the specific needs of the tribe. For example, although the cost of some services (e.g., real estate services and law enforcement) could be lower than average because of the lack of a land base for the tribe, the tribe's broad authority to negotiate for and provide services under the Snyder Act could result in above-average costs for other services.

Based on information provided by the Bureau of Indian Affairs (BIA), we estimate that reviewing and verifying the tribal roll would cost about $120,000 in fiscal year 1989. The other administrative requirements for the BIA and the Department of Health and Human Services are not expected to result in significant costs for the federal government.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Carol Cohen, who can be reached at 226–2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2672, as amended, will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee received the following letters from the U.S. Department of the Interior with the Administration's views on S. 2672:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 27, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On September 21, 1988, the Select Committee on Indian Affairs considered S. 2672, the "Lumbee Recognition Act".

At that meeting there was considerable discussion of the Act of June 7, 1956 (70 Stat. 254). However, it was not clear to my staff whether the Committee was interpreting the 1956 Act as recognizing a tribe or a group of individuals as being of Indian descent.

The Associate Solicitor for Indian Affairs has provided us with the enclosed opinion which states that the Act did not convey Federal recognition as a tribe, but rather identified a group of individuals as Lumbee Indians.

We do not support the Committee's plan to amend the 1956 Act, or any other method of circumventing our administrative process. We urge the Committee to reconsider this amendment in view of the enclosed Solicitor's opinion.

Sincerely,

ROSS O. SWIMMER,
Assistant Secretary—Indian Affairs.

Enclosure.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, DC, September 26, 1988.

BIA.IA.0929 Memorandum.

To: Assistant Secretary—Indian Affairs.
From: Associate Solicitor, Division of Indian Affairs.
Subject: Lumbee Indians of North Carolina.

On September 22, legislative staff in the Bureau of Indian Affairs (BIA) informed us that the Senate Select Committee on Indian Affairs was considering an amendment to the Act of June 7, 1956, 70 Stat. 254 (Lumbee Act) which concerns the Lumbee Indians of North Carolina. The staff requested our opinion on the possible effects of the proposed amendment.

Our understanding is that the amendment being proposed would delete the last sentence of Section 1 of the Act which states:

> Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

Apparently, the Committee believes that such an amendment would constitute Federal tribal recognition and eligibility for services.

We do not believe that the Act, as originally enacted, provided Federal recognition of the Lumbee Indians as a tribe. Further, we do not believe that the remaining portions of the Act, after delet-

ing the sentence in question as proposed by the Committee, would extend the recognition of individuals as Lumbee Indians to Federal recognition as a tribe.

First, to interpret the Act as granting Federal recognition would be contrary to the plain meaning of the statute. The Act states in part:

> That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina. * * *

(Act of June 7, 1956, ch. 375, 70 Stat. 254). The Act essentially identifies a group of Indians as Lumbee Indians. In contrast to the language of the Act of June 7, 1956, when Congress desires to grant Federal recognition to a tribe, it consistently does so by express language. For example, the Act of May 15, 1978, 25 U.S.C. § 861(a), states, in part, "The Modoc Indian Tribe of Oklahoma is hereby recognized as a tribe. * * *." (See also, Act of November 18, 1977, 25 U.S.C. § 711). Nothing in the language of the Act of June 7, 1956 proposes to grant Federal recognition to the Lumbee Indians as a tribe.

Second, nothing in legislative history supports the assertion that Congress granted Federal tribal recognition to the Lumbee Indians. The report from the House Committee on Interior and Insular Affairs states:

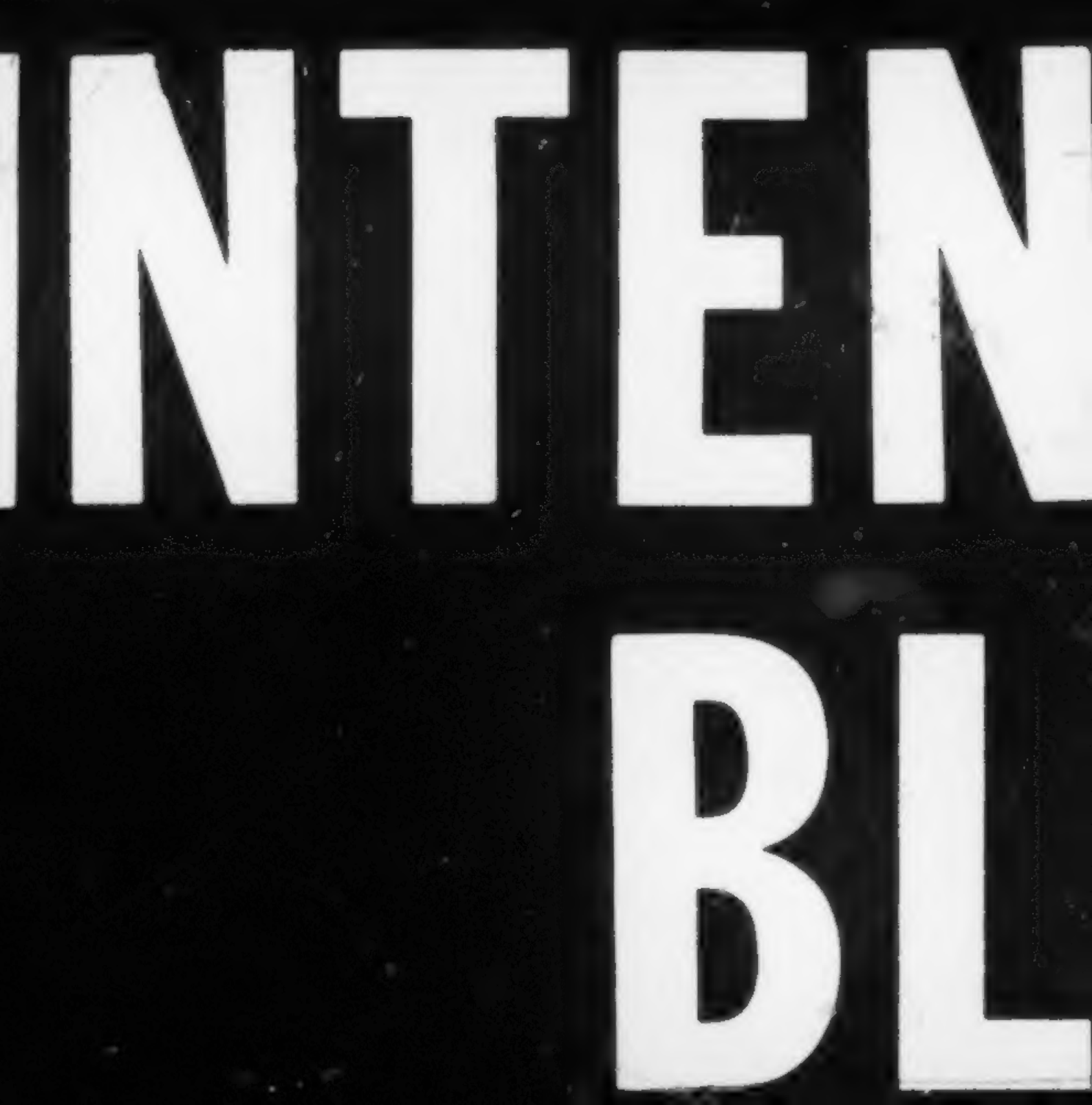
> If enacted, H.R. 4656 would permit about 4,000 Indians of mixed blood presently residing in Robeson and adjoining counties in North Carolina to become known and designated as the Lumbee Indians of North Carolina. * * * They stem from early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina.

(H.R. Rep. No. 1654, 84th Cong., 2d Sess. 1 (1956)).

Commenting on the legislation, the Assistant Secretary of Interior stated:

> The United States has entered into no treaty or agreement with the Indians of Robeson and adjoining counties, and it has recognized no obligation to furnish to them services that are furnished to the citizens of this country who are recognized by the Congress as Indians.

(Id. at 2). In response to some of the Department's concerns on the proposed legislation, the Senate committee amended the bill to "clearly indicate that the Lumbee Indians will not be eligible for any services provided through the Bureau of Indian Affairs to other Indians." (S. Rep. No. 2012, 84th Cong., 2d Sess. 2 (1956)). As reflected in the exchange between Mr. Ford and Mr. Carlyle (102 Cong. Rec. 2900 (1956)), the purpose of the legislation was simply to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identify a group of Indian descendants in North Carolina as Lumbee Indians.

In response to a Senate resolution enacted on June 30, 1914, the Department of Interior conducted an extensive investigation of the tribal rights of the Indians of Robeson and adjoining counties of North Carolina. The report (copy enclosed) concluded:

> [T]he Indians originally settled in Robeson and adjoining counties in North Carolina were an amalgamation of the Hatteras Indians with Gov. White's lost colony; the present Indians are their descendants with a further amalgamation with the early Scotch and Scotch-Irish settlers, such amalgamation continuing down to the present time, together with a small degree of amalgamation with other races. I do not find that the Hatteras Indians or the so-called Croatan Indians ever had any treaty relations with the United States, or that they have any tribal rights with any tribe or band of Indians. * * *

(O. M. McPherson, Report on Condition and Tribal Rights of the Indians of Robeson and Adjoining Counties of North Carolina at 17 (1914)).

Third, Congress enacted this legislation in 1956 during an era when termination, rather than recognition, was its expressly stated policy. From 1954 through 1959, Congress enacted legislation terminating over 100 tribes. (See, Charles F. Wilkinson and Eric R. Biggs, The Evolution of the Termination Policy, 5 Am. Ind. L. Rev. 139 (1977); H.R. Res. 698, 98 Cong. Rec. 8788 (1952); and H.R. Con. Res. 108, 67 Stat. B132 (1953)). To interpret the Act as granting Federal recognition during the termination era would be to fabricate a result clearly contrary to the manifest policies and stated intent of Congress during this era.

Fourth, the decision of the United States Court of Appeals in *Maynor* v. *Morton*, 510 F.2d 1254 (D.C. Cir. 1975), supports our conclusion that nothing in the Act granted status to the Lumbee Indians as a Federally recognized tribe. The Court stated, "[T]he limited purpose of the legislation appears to be to designate this group of Indians as 'Lumbee Indians' * * *." (Id. at 1257). However, the Court also held that the legislation did not prohibit individual Indians from receiving benefits based on their status as Indians.

Fifth, the Comptroller General throughout his ten-page opinion of August 1, 1979 (B-185659), indicates that the Lumbee Indians are not a Federally recognized tribe but may receive benefits under other appropriate legislation as Indians or as members of a State recognized tribe.

We do not believe that the Act of June 7, 1956, with or without the sentence in question conveys Federal tribal recognition. This is confirmed by the plain meaning of the statute, legislative history, the period of enactment, the court's decision in *Maynor*, and the Comptroller General's characterization.

However, we note that, consistent with the Department's recent testimony on the proposed Lumbee legislation, deleting the sentence as proposed by the Committee would remove any doubt as to whether the Lumbee Indians may apply for recognition under the Department's acknowledgment procedures. Because the language

in the Act is similar, if not identical, to language used in many of the termination statutes, it has been argued that the Act prohibits a Federal relationship. Deleting the last sentence of Section 1 of the Act of June 7, 1956 would confirm that the Lumbee Indians may apply for Federal acknowledgment under 25 CFR Part 83.

DENNIS DAUGHERTY.

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning Mr. Chairman and members of the Committee. I am pleased to present the views of the Department of the Interior on S. 2672, the "Lumbee Recognition Act".

We are at a minimum strongly opposed to enactment of S. 2672. Moreover, the Administration, after further consideration, intends to provide a more detailed and definitive report on the bill.

The bill would provide Federal recognition to the Lumbee Tribe of North Carolina. However, we have not determined that the group meets the requirements for Federal acknowledgment as a tribe under 25 CFR Part 83 (copy attached). Federal acknowledgment establishes a perpetual government-to-government relationship between the tribe and the United States, and has considerable social and economic impact on the petitioning group, its neighbors, and Federal, state, and local governments. Federal recognition would make this group eligible for services and benefits offered by the Bureau of Indian Affairs and the Indian Health Service as well as economic development assistance from other Federal agencies. If services are provided to this group, at the same per capita cost as services currently provided to members of recognized Indian tribes, the total annual impact on Federal spending cound exceed $100 million per year. Because of the significance of acknowledgment, the process reflected in 25 CFR Part 83 should be adhered to as it is necessarily deliberate, detailed, and thorough.

We also note that the jurisdictional provisions in section 6(a) of the bill do not reflect the fact that the Lumbee Indians are, and always have been, subject to the jurisdiction of the State of North Carolina and its political subdivisions. Unlike tribes which exercise some tribal jurisdiction over reservation land, the Lumbee Indians do not have a reservation or trust land over which to exercise such authority. The provision in section 6(a) of the bill should be contrasted with the more appropriate provision relating to the Wampanoag Tribe in 25 U.S.C. 1771g.

THE LUMBEE PETITION

The Lumbee Regional Development Association, Inc. submitted its initial undocumented letter petition on January 4, 1980. A documented petition was received on December 17, 1987 and supplements were received on February 4 and 22, 1988. The Lumbee petitioner is one of 12 petitioners from North Carolina, including 5 from groups in Robeson and adjoining counties where the Lumbee group is located. The 5 are the Hatteras Tuscarora, Drowning Creek Tuscarora, Cherokees of Hoke County, Cherokees of Robeson County, and Tuscarora Nation of North Carolina.

The Lumbee petition consists of a two volume narrative report, 1½ file boxes of documentary exhibits, and a copy of the 16 volume membership roll. Because of the size of the enrollment (37,000+), the backup data for the roll (i.e., the genealogical portion of the petition) was not submitted, by mutual agreement. It would be reviewed during a field trip.

Because of staff commitments to work on other pending petitions, we have not given more than a cursory review of the Lumbee petition. The normal obvious deficiencies review under our regulations would probably not begin until about March 1, 1989. It would take about two to three months including time for review of the genealogical portion. Assuming that the Lumbees responded by the end of 1989 to any deficiencies found in our review, active consideration of the petition could not be expected to begin before the fall of 1991 at the earliest. Once under active consideration, it usually takes some 24 months to complete all stages and a final determination to become effective or, in this case, until the fall of 1993. A more expedited review would require placing the Lumbee petition ahead of other petitions, which we view as unfair to other petitioning groups.

Our very brief review of the petition suggests that there are questions that need to be raised with the petitioning group and its researchers. Some questions relate to the interpretation or completeness of documentation supporting the group's early history. There are other questions regarding the completeness of the membership roll and the possible future status of other petitioners in or near Robeson County who may be part of the Lumbee group. These are questions which are normally raised, thoroughly explored, and often answered satisfactorily through our preliminary review procedure.

THE 1956 LUMBEE ACT

Once before the Congress has considered the status of the Indians of Robeson and adjacent counties in North Carolina. It should be noted that the resulting act avoided describing them as a tribe. The Act of June 7, 1956 (70 Stat. 254) (after four "Whereas" clauses) provides:

> That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. *Nothing in this Act* shall make such Indians eligible for any services performed by the United States for Indians because of thier status as Indians, and none of the statutes of the United

States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians. [Emphasis supplied.]

The 1975 decision of the U.S. Court of Appeals for the D.C. Circuit in *Maynor* v. *Morton* (510 F2d 1254) and a 1979 decision of the Comptroller General (58 Comp. Gen. 699) would seem to indicate that the 1956 Act is not a bar to action as to any of the six petitioners in Robeson and adjacent counties under 25 CFR Part 83, although that specific issue was not mentioned in either decision. However, a legislative statement to that effect would remove any doubt and we recommend that such a statement be enacted.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

PART 83—PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE.

Sec.

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AUTHORITY: 5 U.S.C. 301; secs. 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9; and 230 DM 1 and 2.

SOURCE: 43 FR 39361, Sept. 5, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 83.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, or his authorized representative.

(c) "Department" means the Department of the Interior.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Area Office" means the Bureau of Indian Affairs Area Office.

(f) "Indian tribe," also referred to herein as "tribe," means any Indian group within the continental United States that the Secretary of Interior acknowledges to be an Indian tribe.

(g) "Indian group" or "group" means any Indian aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

(h) "Petitioner" means any entity which has submitted a petition to the Secretary requesting acknowledgement that it is an Indian tribe.

(i) "Autonomous" means having a separate tribal council, internal process, or other organizational mechanism which the tribe has used as its own means of making tribal decisions independent of the control of any other Indian governing entity. Autonomous must

be understood in the context of the Indian culture and social organization of that tribe.

(j) "Member of an Indian group" means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

(k) "Member of an Indian tribe" means an individual who meets the membership requirements of the tribe as set forth in its governing document or is recognized collectively by those persons comprising the tribal governing body, and has continuously maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept.

(l) "Historically", "historical" or "history" means dating back to the earliest documented contact between the aboriginal tribe from which the petitioners descended and citizens or officials of the United States, colonial or territorial governments, or if relevant, citizens and officials of foreign governments from which the United States acquired territory.

(m) "Continuously" means extending from generation to generation throughout the tribe's history essentially without interruption.

(n) "Indigenous" means native to the continental United States in that at least part of the tribe's aboriginal range extended into what is now the continental United States.

(o) "Community" or "specific area" means any people living within such a reasonable proximity as to allow group interaction and a maintenance of tribal relations.

(p) "Other party" means any person or organization, other than the petitioner who submits comments or evidence in support of or in opposition to a petition.

§ 83.2 Purpose.

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist. Such acknowledgement of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes. Such acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgement shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

§ 83.3 Scope.

(a) This part is intended to cover only those American Indian groups indigenous to the continental United States which are ethnically and culturally identifiable, but which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups which can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.

(b) This part does not apply to Indian tribes, organized bands, pueblos or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs.

(c) This part is not intended to apply to associations, organizations, corporations or groups of any character, formed which meets the criteria in §83.7(a) through (g) has recently incorporated or otherwise formalized its existing autonomous process will have no bearing on the Assistant Secretary's final decision.

(d) Nor is this part intended to apply to splinter groups, political factions, communities or groups of any character which separate from the main body of a tribe currently acknowledged as being an Indian tribe by the Department, unless it can be clearly established that the group has functioned throughout history until the present as an autonomous Indian tribal entity.

(e) Further, this part does not apply to groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship.

§ 83.4 Who may file.

Any Indian group in the continental United States which believes it should be acknowledged as an Indian tribe, and can satisfy the criteria in § 83.7, may submit a petition requesting that the Secretary acknowledge the group's existence as an Indian tribe.

§ 83.5 Where to file.

A petition requesting the acknowledgement that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior, 18th and "C" Streets NW., Washington, D.C. 20245. Attention: Federal acknowledgement project.

§ 83.6 Duties of the Department.

(a) The Department shall assume the responsibility to contact, within a twelve-month period following the enactment of these regulations, all Indian groups known to the Department in the continental United States whose existence has not been previously acknowledged by the Department. Included specifically shall be those listed in chapter 11 of the American Indian Policy Review Commission final report, volume one, May 17, 1977. The Department shall inform all such groups of the opportunity to petition for an acknowledgement of tribal existence by the Federal Government.

(b) The Secretary shall publish in the Federal Register within 90 days after effective date of these regulations, a list of all Indian tribes which are recognized and receiving services from the Bureau of Indian Affairs. Such list shall be updated and published annually in the Federal Register.

(c) within 90 days after the effective date of the final regulations, the Secretary will have available suggested guidelines for the format of petitions, including general suggestions and guidelines on where and how to search for required information. The Depart-

ment's example of petition format, while preferable, shall not preclude the use of any other format.

(d) The Department shall, upon request, provide suggestions and advice to researchers representing a petitioner for their research into the petitioner's historical background and Indian identity. The Department shall not be responsible for the actual research on behalf of the petitioner.

§ 83.7 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge tribal existence. All the criteria in paragraphs (a) through (g) of this section are mandatory in order for tribal existence to be acknowledged and must be included in the petition.

(a) A statement of facts establishing that the petitioner has been identified from historical times until the present on a substantially continuous basis, as "American Indian," or "aboriginal." A petitioner shall not fail to satisfy any criteria herein merely because of fluctuations of tribal activity during various years. Evidence to be relied upon in determining the group's substantially continuous Indian identity shall including one or more of the following:

(1) Repeated identification by Federal authorities;

(2) Longstanding relationships with State governments based on identification of the group as Indian;

(3) Repeated dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;

(4) Identification as an Indian entity by records in courthouses, churches, or schools;

(5) Identification as an Indian entity by anthropologists, historians, or other scholars;

(6) Repeated identification as an Indian entity in newspapers and books;

(7) Repeated identification and dealings as an Indian entity with recognized Indian tribes or national Indian organizations.

(b) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.

(c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present.

(d) A copy of the group's present governing document, or in the absence of a written document, a statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members.

(e) A list of all known current members of the group and a copy of each available former list of members based on the tribe's own defined criteria. The membership must consist of individuals who have established, using evidence acceptable to the Secretary, descendancy from a tribe which existed historically or from historical tribes which combined and functioned as a single autonomous

entity. Evidence acceptable to the Secretary of tribal membership for this purpose includes but is not limited to:

(1) Descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes;

(2) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being an Indian descendant and a member of the petitioning group;

(3) Church, school, and other similar enrollment records indicating the person as being a member of the petitioning entity;

(4) Affidavits of recognition by tribal elders, leaders, or the tribal governing body, as being an Indian descendant of the tribe and a member of the petitioning entity;

(5) Other records or evidence identifying the person as a member of the petitioning entity.

(f) The membership of the petitioning group is composed principally of persons who are not members of any other North American Indian tribe.

(g) The petitioner is not, nor are its members, the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.

§ 83.8 Notice of receipt of petition.

(a) Within 30 days after receiving a petition, the Assistant Secretary shall send an acknowledgment of receipt, in writing, to the petitioner, and shall have published in the Federal Register a notice of such receipt including the name and location, and mailing address of the petitioner and other such information that will identify the entiity submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined.

(b) Groups with petitions on file with the Bureau on the effective date of these regulations shall be notified within 90 days from the effective date that their petition is on file. Notice of that fact, including the information required in paragraph (a) of this section, shall be published in the Federal Register. All petitions on file on the effective date will be returned to the petitioner with guidelines as specified in § 83.6(c) in order to give the petitioner an opportunity to review, revise, or supplement the petition. The return of the petition will not affect the priority established by the initial filing.

(c) The Assistant Secretary shall also notify, in writing, the Govenror and attorney general of any State in which a petitioner resides.

(d) The Assistant Secretary shall also cause to be published the notice of receipt of the petition in a major newspaper of general circulation in the town or city nearest to the petitioner. The notice will include, in addition to the information in paragraph (a) of this section, notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to the petition. Such submissions shall be provided to the petitioner upon receipt by the Federal acknowledgement staff. The petitioner shall be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

§ 83.9 Processing the petition.

(a) Upon receipt of a petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the petition and supporting evidence, and the factual statements contained therein. The Assistant Secretary may also initiate other research by his staff, for any purpose relative to analyzing the petition and obtaining additional information about the petitioner's status, and may consider any evidence which may be submitted by other parties.

(b) Prior to actual consideration of the petition, the Assistant Secretary shall notify the petitioner of any obvious deficiencies, or significant omissions, that are apparent upon an initial review, and provides the petitioner with an opportunity to withdraw the petition for further work or to submit additional information or a clarification.

(c) Petitions shall be considered on a first come, first serve basis determined by the date of original filing with the Department. The Federal acknowledgement project, staff shall establish a priority register including those petitions already pending before the Deaprtment.

(d) The petitioner and other parties submitting comments on the petition shall be notified when the petition comes under active consideration. They shall also be notified who is the primary Bureau staff member reviewing the peititon, his backup, and supervisor. Such notice shall also include the office address and telephone number of the primary staff member.

(e) A petitioning group may, at its option and upon written request, withdraw its petition prior to publication by the Assistant Secretary of his finding in the Federal Register and, may if it so desires, file an entirely new petition. Such petitioners shall not lose their priority date by withdrawing and resubmitting their petitions later, provided the time periods in paragraph (f) of this section shall begin upon active consideration of the resubmitted petition.

(f) Within 1 year after notifying the petitioner that active consideration of the petition has begun, the Assistant Secretary shall publish his proposed findings in the Federal Register. The Assistant Secretary may extend that period up to an additional 180 days upon a showing of due cause to the petitioner. In addition to the proposed findings, the Assistant Secretary shall prepare a report which shall summarize the evidence for the proposed decision. Copies of such report shall be available for the petitioner and other parties upon written request.

(g) Upon publication of the proposed findings, any individual or organization wishing to challenge the proposed findings shall have a 120-day response period to present factual or legal arguments and evidence to rebut the evidence relied upon.

(h) After consideration of the written arguments and evidence rebutting the proposed findings, the Assistant Secretary shall make a determination regarding the petitioner's status, a sumamry of which shall be published in the Federal Register within 60 days from the expiration of the response period. The determination will

become effective in 60 days from publication unless earlier withdrawn pursuant to § 83.10.

(i) The Assistant Secretary shall acknowledge the existence of the petitoner as an Indian tribe when it is determined that the group satisfied the criteria in § 83.7.

(j) The Assistant Secretary shall refuse to acknowledge that a petitioner is an Indian tribe if it fails to satisfy the criteria in § 83.7. In the event the Assistant Secretary refuses to acknowledge the eligibility of a petitioning group, he shall analyze and forward to the petitioner other options, if any, under which application for services and other benefits may be made.

§ 83.10 Reconsideration and final action.

(a) The Assistant Secretary's decision shall be final for the Department unless the Secretary requests him to reconsider within 60 days of such publication. If the Secretary recommends reconsideration, the Assistant Secretary shall consult with the Secretary, review his initial determination, and issue a reconsidered decision within 60 days which shall be final and effective upon publication.

(b) The Secretary in his consideration of the Assistant Secretary's decision may review any information available to him, whether formally part of the record or not; where reliance is placed on information shall be identified as to source and nature, and inserted in the record.

(c) The Secretary may request reconsideration of any decision by the Assistant Secretary but shall request reconsideration of any decision, which in his opinion:

(1) Would be changed by significant new evidence which he has received subsequent to the publication of the decision; or

(2) A substantial portion of the evidence relied on was unrealistic or was of little probative value; or

(3) The petitioner's or the Bureau's research appears inadequate or incomplete in some material respect.

(d) Any notice which by the terms of these regulations must be published in the FEDERAL REGISTER, shall also be mailed to the petitioner, the Governors and attorney generals of the States involved, and to other parties which have commented on the proposed findings.

§ 83.11 Implementation of decisions.

(a) Upon final determination that the petitioner is an Indian tribe, the tribe shall be eligible for services and benefits from the Federal Government available to other federally recognized tribes and entitled to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes with a government-to-government relationship to the United States as well as having the responsibilities and obligations of such tribes. Acknowledgment shall subject such Indian tribes to the same authority of Congress and the United States to which other federally acknowledged tribes are subject.

(b) While the newly recognized tribe shall be eligible for benefits and services, acknowledgement of tribal existence will not create an immediate entitlement to existing Bureau of Indian Affairs programs. Such programs shall become available upon appropriation

of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly recognized tribe.

(c) Within 6 months after acknowledgement that the petitioner exists as an Indian tribe, the appropriate Area Office shall consult and develop in cooperation with the group, and forward to the Assistant Secretary, a determination of needs and a recommended budget required to serve the newly acknowledged tribe. The recommended budget will be considered along with other recommendations by the Assistant Secretary in the usual budget-request process.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 570

AN ACT Relating to the Lumbee Indians of North Carolina

Whereas many Indians now living in Robeson and adjoining counties are descendants of that once large and prosperous tribe which occupied the lands along the Lumbee River at the time of the earliest white settlements in that section; [and]

Whereas at the time of their first contacts with the colonists, these Indians were a well-established and distinctive people living in European-type houses in settled towns and communities, owning slaves and livestock, tilling the soil, and practicing many of the arts and crafts of European civilization; [and]

Whereas by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others, also found on the roster of the earliest English settlements, these Indians may, with considerable show of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; [and]

Whereas these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history[: Now, therefore,] ";"

Whereas the Lumbee Indians of Robeson and adjoining counties in North Carolina are descendants of coastal North Carolina Indian tribes, principally Cheraw, and have remained a distinct Indian community since the time of contact with white settlers;

Whereas the Lumbee Indians have been recognized by the State of North Carolina as an Indian tribe since 1885;

Whereas the Lumbee Indians have sought Federal recognition as an Indian tribe since 1888; and

Whereas the Lumbee Indians are entitled to Federal recognition of their status as an Indian tribe and the benefits, privileges, and immunities that accompany such status: Now, therefore,".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States [Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

SEC. 2. All laws and parts of laws in conflict with this Act are hereby repealed.]

FEDERAL RECOGNITION

SEC. 2. Federal recognition is hereby extended to the Lumbee Tribe of Cheraw Indians of North Carolina. All laws and regulations of the United States of general application to Indians and Indian tribes shall apply to the Lumbee Tribe of Cheraw Indians of North Carolina and its members.

SERVICES

SEC. 3. (a) The Lumbee Tribe of Cheraw Indians of North Carolina and its members shall be eligible for all services and benefits provided to Indians because of their status as federally recognized Indians, except that members of the Tribe shall not be entitled to such services until the appropriation of funds for these purposes. For the purposes of the delivery of such services, those members of the Tribe residing in Robeson and adjoining counties shall be deemed to be resident on or near an Indian reservation.

(b) Upon verification of a tribal roll under section 4 by the Secretay of the Interior, the Secretary of the Interior and the Secretary of Health and Human Services shall develop, in consultation with the Lumbee Tribe of Cheraw Indians of North Carolina, a determination of needs and a budget required to provide services to which the members of the tribe are eligible. The Secretary of the Interior and the Secretary of Health and Human Services shall each submit a written statement of such needs and budget with the first budget request submitted to the Congress after the fiscal year in which the tribal roll is verified.

(c)(1) The Lumbee Tribe of Cheraw Indians of North Carolina is authorized to plan, conduct, consolidate, and administer programs, services, and functions authorized under the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452, et seq.) and the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), popularly known as the Snyder Act, pur-

suant to an annual written funding agreement between the Lumbee Tribe of Cheraw Indians of North Carolina and the Secretary of the Interior which shall specify—

(A) the services to be provided, the functions to be performed, and the procedures to be used to reallocate funds or modify budget allocations, within any fiscal year, and

(B) the responsibility of the Secretary of the Interior for, and the procedure to be used in, auditing the expenditures of the Tribe.

(2) The authority provided under this subsection shall be in lieu of the authority provided under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seqq.).

(3) Nothing in this subsection shall be construed as affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from lawsuit enjoyed by the Lumbee Tribe of Cheraw Indians of North Carolina or authorizing or requiring the termination of any trust responsibility of the United States with respect to the Tribe.

CONSTITUTION AND MEMBERSHIP

SEC. 4. (a) The Lumbee Tribe of Cheraw Indians of North Carolina shall organize for its common welfare and adopt a constitution and bylaws. Any constitution, bylaws, or amendments to the constitution or bylaws that are adopted by the tribe must be consistent with the terms of this Act and shall take effect only after such documents are filed with the Secretary of the Interior. The Secretary shall assist the Tribe in the drafting of a constitution and bylaws, the conduct of an election with respect to such constitution, and the reorganization of the government of the Tribe under any such constitution and bylaws.

(b)(1) Until the Lumbee Tribe of Cheraw Indians of North Carolina adopts a constitution, the membership of the Tribe shall, subject to review by the Secretary, consist of every individual who is named in the tribal membership roll that is in effect on the date of enactment of this Act.

(2) The review of the membership roll of the Lumbee Tribe of Cheraw Indians of North Carolina shall be limited to verification of compliance with the membership criteria of the Tribe as stated in the Lumbee Petition for Federal Acknowledgment filed with the Secretary by the tribe on December 17, 1987. The Secretary shall complete his review and verification of the tribal roll within twelve months after the date of enactment of this Act.

JURISDICTION

SEC. 5. (a)(1) The State of North Carolina shall exercise jurisdiction over—

(A) all criminal offenses that are committed on, and

(B) all civil actions that arise on,

lands located within the State of North Carolina that are owned by, or held in trust by the United States for, the Lumbee Tribe of Cheraw Indians of North Carolina or any member of the Lumbee Tribe of Cheraw Indians of North Carolina or any dependent

Indian communities of the Lumbee Tribe of Cheraw Indians of North Carolina.

(2) the Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, any transfer by the State of North Carolina to the United States of any portion of the jurisdiction of the State of North Carolina described in paragraph (1).

(3) The provisions of this subsection shall not affect the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

(b) Section 5 of the Act of June 18, 1934 (Chapter 576; 25 U.S.C. 465), and the Act of April 11, 1970 (84 Stat. 120; 25 U.S.C. 488 et seq.), shall apply to the Lumbee Tribe of Cheraw Indians of North Carolina with respect to lands within the exterior boundaries of Robeson and adjoining counties, North Carolina.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated such funds as may be necessary to carry out this Act; Provided, That in the first fiscal year in which funds are appropriated, the tribe's proposals for expenditures of such funds shall be submitted to the Select Committee on Indian Affairs and the House Interior and Insular Affairs for 60 calendar days prior to any expenditure of such funds by the tribe.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, September 28, 1988.

To: Senate Select Committee on Indian Affairs.
Attention: Virginia Boylan.
From: American Law Division.
Subject: Federal Recognition of Lumbee Indians

This responds to your request for a legal analysis of the following question which you have posed: May the 1956 statute [1] pertaining to the Lumbee Indians be viewed as a full or partial recognition of the Lumbee Indians of North Carolina as Indians or as an Indian tribe?

We shall respond to your request by examining the statute and its legislative history and detailing the legal meaning of the concept of federal recognitions. Finally we shall draw conclusions to the effect that the 1956 statute does not provide recognition of Lumbee Indians as a policital entity but that it is evidence that could be considered by a court or an administrative agency along with other evidence should there be an acknowledgement request.

Lumbee Legislation of 1956.—The 1956 statute regarding the Lumbee Indians reads as follows:

> The Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhab-

[1] Pub. L. 84-570, 78 Stat. 254.

> iting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and of the United States and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.
>
> SEC. 2. All laws and parts of laws in conflict with this Act are hereby repealed.—78 Stat. 254.

On its face this statute: (1) states that Indians residing in 1956 [2] in Robeson and adjoining counties who claim descent from American colonists and remnants of Indian tribes who had originally inhabited North Carolina coastal regions are to be known as "Lumbee Indians of North Carolina"; (2) states that they shall continue to enjoy the rights, privileges and immunities that they enjoy as North Carolina and United States citizens; (3) cautions that they will be subject to the same obligations and duties of such citizens under the laws of both the state and federal government; (4) makes it clear that their eligibility for federal services as Indians will not be affected by this legislation; and (5) makes it clear that no federal statute affecting Indians "because of their status as Indians" is to apply to the Lumbee Indians. It also repeals all contrary laws.

On its face, therefore, this statute does not provide any answers to the questions you have posed. It does not clearly say that Congress henceforth recognizes these Indians as a tribe, the Lumbee Indians of North Carolina. It does not explicitly acknowledge a federal trust relationship with these Indians. In fact, it expressly avoids opening up for them the benefits and services provided by the federal government to Indians.

Legislative History.—The legislative history reveals information that sheds some light on these questions. The Committee reports [3] indicate that the the primary intent of the legislation was to designate a name for this group. The name selected was the result of a vote by the Indians in 1951 when they chose to be known as Lumbee Indians of North Carolina rather than Cherokee Indians of Robeson County. Neither the House or the Senate Committee intended to make federal services available to the Lumbee; the Senate amended the original bill to include the disclaimer in Sec-

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[2] The statute refers to these Indians as "originally found by the first white settlers on the Limbee River in Robeson County." This phrase seems to imply that the Indians settled in Robeson and adjoining counties of North Carolina in 1956 could have been "originally found by the first white settlers on the Lumbee River in Robeson County" (rather than descedants of those who had been originally found in that place).

[3] S. Rep. 84-3012, 84th Cong., 2d Sess. (1956); H.R. Rep. 84-1654, 84th Cong., 2d Sess. (1956).

tion 2. The Department of the Interior recommended against the bill in the following language:

> The group of Indians who reside in Robeson and adjoining counties in North Carolina are not a segment of either the Eastern band of Cherokee Indians of North Carolina or the Cherokee Nation of Oklahoma. The State of North Carolina in 1985 recognized the group as Croatan Indians. In 1911 the word 'Croatan' was dropped and the designation 'Indians of Robeson County' was adopted by State law. Two years later the same people were designated 'Cherokee Indians of Robeson County,' * * *.
>
> The United States has entered into no treaty or agreement with the Indians of Robeson and adjoining counties, and it has recognized no obligation to furnish to them services that are furnished to the citizens of this country who are recognized by the Congress as Indians. We are therefore unable to recommend that the Congress take any action which might ultimately result in the imposition of additional obligations on the Federal Government or in placing additional persons of Indian blood under the jurisdiction of this Department.
>
> The persons who constitute this group of Indians have been recognized and designated as Indians by the State legislature. If they are not completely satisfied with such recognition, they, as citizens of the State, may petition the legislature to amend or otherwise change that recognition. Except for the possibility of becoming entitled to Federal services as Indians, the position of this group of Indians would not be enhanced by enactment of this bill * * *.
>
> If your committee should recommend the enactment of the bill, it should be amended to indicate clearly that it does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians.[4]

The legislation was enacted with an amendment that specified that there would be no eligibility for federal services and benefits to Indians resulting from enactment. This seems to have been in keeping with the original intent of the sponsor of the legislation. When the measure was brought to a vote in the House, the legislation's author, Representative Carlyle of North Carolina was asked: "whether or not this bill, if enacted would in any way whatsoever commit the Federal Government in the future to the furnishing of services or monetary sums?" [5] To this question Representative Carlyle responded in the negative. Thereupon Representative Ford stated that "[i]t simply provides for the change of name," and Representative Carlyle, agreed.[6]

The bill was enacted with the following introductory clauses that illuminate the background of the legislation:

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[4] Letter from Orme Lewis, Assistant Secretary of the Interior to Hon. Clair Engle, Chairman, Committee on Interior and Insular Affairs, House of Representatives, dated August 3, 1955, S. Rep. 94-2012, 1-2.

[5] 102 Cong. Record 2900 (May 21, 1955).

[6] *Id.*

> Whereas many Indians now living in Robeson and adjoining counties are descendants of that once large and prosperous tribe which occupied the lands along the Lumbee River at the time of the earliest white settlements in that section; and
> Whereas at the time of their first contacts with the colonists, these Indians were a well-established and distinctive people living in European-type houses in settled towns and communities, owning slaves and livestock, tilling the soil, and practicing many of the arts and crafts of European civilization; and
> Whereas by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others found on the roster of the earliest English settlements, these Indians may, with considerable show of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; and
> Whereas these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history. 78 Stat. 254.

The final of these clauses contains an indication of the aim of the legislation: validating the "social status" of these people and preserving their "racial history." In the context of this legislation this seems to mean formal recognition of them as a identifiable group who are descended from an "admixture" of Indian and early colonists. Whether that suffices as federal recognition of an Indian tribe or a group of Indian people demands further legal analysis.

JUDICIAL INTERPRETATION OF THE LUMBEE STATUTE.—There is one federal court case construing this statute, *Maynor* v. *Morton.*[7] It involved an action to declare that the appellant, Maynor, was eligible for benefits under the Indian Reorganization Act (IRA).[8] Maynor contended that he was one of 22 Lumbee Indians who in 1938 had been declared qualified for certain benefits under IRA. He claimed that at that time the Department of the Interior had approved his application as having qualified under a provision permitting persons "of one-half or more Indian blood" [9] to take advantage of certain IRA provisions. In 1971 Maynor and others in the group of 22 petitioned the Department of the Interior to establish a reservation for them under one of the IRA provisions open to persons "one-half or more Indian blood." The Department of the Interior ruled against the petition on the theory that the 1956 Lumbee legislation had terminated any rights that any Lumbee Indians possessed with regard to federal services or benefits.

The court found in favor of the appellant. It did so by construing the 1956 act as having "the limited purpose * * * to designate this group of Indians as 'Lumbee Indians' and recognize them as a specific group" displaying no "intention whatsoever to take away any

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[7] 510 F.2d 1254 (1975).
[8] 25 U.S.C. § 461 et seq.
[9] 25 U.S.C. § 479.

rights conferred on any individuals by any previous legislation." [10] In speaking of the 1956 legislation, the court said:

> The whole purpose of the clause, from whence arises the issue in this case, was simply to make sure that a simple statute granting the name 'Lumbee Indian' to a group of Indians, which hitherto had not had such designation legally was not used in and of itself to acquire benefits from the United States Government.[11]

While the court in *Maynor,* speaks of "recogniz[ing] them [the Lumbee Tribe] as a specific group," [12] and refers to "granting the name 'Lumbee Indian' to a group of *Indians"* in conjunction with the 1956 act, the court did not have before it the precise question of whether the 1956 statute effectively bestowed federal recognition of the Lumbees or indeed whether it declared the members of the Lumbee tribe incontrovertibly Indian. These statements are, thus, dicta. Another court facing the questions now being posed might not conclude that the legislation provided federal recognition to the Lumbees or confirmed their status as Indians. To resolve those questions there must be an examination of the concept of federal recognition and the issue of what it means for Congress to recognize a group as Indians.

The Concept of Federal Recognition.—Federal recognition of Indian tribes generally refers to acknowledging a group of Indians as a political entity and thereby entitled to services, benefits, protections, or rights from the federal government. Being a "federally recognized" Indian tribe is a prerequisite for receiving many of the services and benefits provided by the Bureau of Indian Affairs. The Indian Self-Determination and the Indian Financing Act, define eligible Indian tribes as those which are "recognized by the federal government as eligible for services from the Bureau of Indian Affairs" [13] or are "recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." [14]

Recognition and the 1956 Lumbee Legislation.—Until a court rules on the exact question of whether the 1956 legislation accorded federal recognition to the Lumbees, there can be no certain resolution of the issue. Because of the wording of the 1956 legislation, the Lumbee Indians are not entitled to these services and benefits and are, thus, not federally "recognized," for the purposes for which the term is most often used. On the other hand, federal recognition is irrelevant for other purposes.[15] The concept of "recognition" can have different meanings in different contexts.

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[10] *Maynor* v. *Morton,* 510 F.2d 1254, 1257–1258.
[11] *Maynor* v. *Morton,* 510 F.2d 1254, 1259.
[12] *Maynor* v. *Morton,* 510 F.2d 1254, 1257–58.
[13] 25 U.S.C. § 125(c).
[14] 25 U.S.C. § 450b(b).
[15] The various services and benefits under the Indian Health Care Act, 25 U.S.C. § 1601 et seq., are provided without regard to federal recognition: subsection 1603(c) defined "Indian" to include individual Indians; subsection 1603(c) defines "Indian" to include "urban Indian organizations"; and the Indian Claims Commission Act, 25 U.S.C. § 70(a), contains no requirement for federal recognition. The court, moreover, have held that recognition is not necessary to establish vested treaty rights. *United States* v. *State of Washington,* 641 F.2d 1368, 1371 (9th Cir. 1981); *Mashpee Tribe* v. *Town of Mashpee,* 447 F. Supp. 940, 950 n. 7, aff'd, 592 F.2d 575 (1st Cir.), cert.

Continued

The power of Congress in Indian affairs derives from the Supreme Court's interpretation of the federal Constitution's treatment of Indian tribes as political entities once having dominion over the land destined to become the United States.[16] Those decisions impute to the United States a guardian-like authority over the Indians and the Indian tribes and allow it considerable flexibility in determining how to treat Indians:

> Of course, it is not meant by that that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of [sic] distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts.[17]

The 1956 legislation does not mention any political organization of the Lumbee or any governing body. It does not convey any land or take any land in trust, make any reference to whether state laws are to apply, or render Lumbees eligible for federal services. It, thus, would seem that there is little room for an argument that the statute was extending recognition of a political entity, i.e., was extending federal recognition of the political existence of the Lumbee Tribe.

On the other hand, the act did officially name the Lumbee community of Robeson and adjoining counties, the Lumbee Indians of North Carolina. One could, therefore, make the argument that in the 1956 legislation Congress was extending to the Lumbee community the recognition of its status as descendants of Indians and whites, as a separate community that could be denominated Indian,[18] but as a community that was not dependent on the United States in any of the ways requiring the protection and benefits of services or any benefits for individuals based on their status as Indians. This interpretation is consistent with the historical context of the Lumbee legislation. It was enacted three years after what is popularly known as Public Law 280,[19] representing the federal program for delegating to the states jurisdiction over Indian reservations, and other legislation of the so-called termination era, when Congress was seeking to end the federal guardianship or special relationship with the Indian tribes.

That Congress has conferred a name of the Lumbee Indians of North Carolina and has recognized the racial and settlement history of the group, moreover, is in the nature of the kind of evidence that the courts and the Department of the Interior use in deter-

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denies. 444 U.S. 866 (1979); but see *Menominee Tribe* v. *United States*, 391 U.S. 404 (1968) (tribe whose trust relationship has been terminated by Congress still retains treaty hunting and fishing rights).

[16] *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515 (1832).

[17] *United States* v. *Sandoval*, 231 U.S. 28, 46 (1913).

[18] The fact that the Lumbee are descended from various tribes and from early white colonists would of itself not prevent Congress from declaring them to be Indian for the limited legal purposes of the 1956 act. See Cohen, F., "Handbook of Federal Indian Law" 19–20 (1982 ed.).

[19] Act of August 15, 1953, ch. 505, 67 Stat. 588, 18 U.S.C. § 1162, 15 U.S.C. §§ 1321–1326, 28 U.S.C. §§ 1360, 1360 note).

mining whether to accord federal recognition.[20] It may be, thus, said that naming the Lumbee Indians is indicative of identification by a Federal authority of existence.[21] If not recognition, it may be said to be a step toward recognition.

Summary.—The 1956 Lumbee legislation clearly did not establish entitlement of the Lumbee Indians for federal services. It also clearly named the group and denominated them as Indians. Without a court decision squarely confronting the issue of whether the 1956 statute confers federal recognition on the Lumbee, there is insufficient documentation to determine if the statute effects federal recognition of the Lumbees. It is, however, a step toward recognition and would be a factor that either the Department of the Interior or a court would have to weigh along with others to determine whether the Lumbees are entitled to federal recognition.

We hope this information is helpful to you and that you will call upon our office should you need further assistance.

M. MAUREEN MURPHY,
Legislative Attorney.

[From the Robesonian (NC), Apr. 25, 1956]

RECOGNITION FOR INDIANS SOUGHT

WASHINGTON.—Senator W. Kerr Scott today asked a senate subcommittee to give federal recognition to the Lumbee Indians of North Carolina.

In testifying before a sub-committee of the Senate Interior Committee, Senator Scott said: "The State of North Carolina has already by state law recognized the Lumbee Indians under that tribal name."

The North Carolina State Legislature gave official recognition to the Lumbee Indians while Scott was Governor of North Carolina.

Giving official recognition to the Lumbee Indians, Scott said, "means a great deal to the 4,000 Indians involved, and I hope that the sub-committee will see fit to recommend approval."

[From the Pembridge Progress, May 3, 1956]

LUMBEE INDIANS

Senator Kerr Scott reports this week that the Lumbee Indians of Southeastern North Carolina should now have their name made official as far as the Federal Government is concerned.

"Last week the Senate Interior Committee's sub-committee on Indian affairs gave a quick okey to a bill that would make the name official. Final action will be routine," Scott said.

The North Carolina state legislature has already passed legislation doing the same thing.

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[20] See 25 C.F.R. § 83.7. See Cohen. F., "Handbook of Federal Indian Law" 3-5.

[21] The Department of the Interior requires "[r]epeated" federal tribal identification. 25 C.F.R. § 83.7(b), inter alias for a group to establish itself as entitled to federal recognition.

[From the New York Times, May 21, 1956]

New Tribe of Indians Is Approved by Senate

Washington, May 21.—The Senate voted today to create a new Indian tribe.

It decided unanimously that some 4,000 Indians around Robeson County, N.C., should be known officially as the Lumbee Indians. They are descendants of early English settlers and coastal Indians.

Some historical speculation in North Carolina links the Robeson County Indians with Sir Walter Raleigh's Lost Colony, the first English settlement in North America, which vanished in 1684.

The bill now goes back to the House for concurrence in a Senate amendment. This stipulates that the Indians' new status will not get them anything from the Government.

[From the Lumberton Post Times (NC), Apr. 26, 1956]

Scott Speaks for Lumbee Indians

The following telegram was received yesterday from Bill Whitley, press secretary to Senator W. Kerr Scott:

"Senator W. Kerr Scott today asked a Senate sub-committee to give Federal recognition to the Lumbee Indians of North Carolina."

In testifying before a sub-committee of the Senate Interior Committee, Senator Scott said: "The State of North Carolina has already by state law recognized the Lumbee Indians under that tribal name."

The North Carolina State Legislature gave official recognition to the Lumbee Indians while Scott was Governor of North Carolina.

"Giving official recognition to the Lumbee Indians," Scott said, "Means a great deal to the 4,000 Indians involved . . . and I hope that the sub-committee will see fit to recommend approval."

[From the Robesonian (NC), May 16, 1956]

Indian Bill Ok'd By Senate Group

A story from Washington yesterday said that the Senate Interior Committee had approved a bill to permit Indians of Robeson county to be designated as the Lumbee Indians of North Carolina. This story appeared only in a second edition of The Robesonian, arriving after printing had already begun, and many papers did not have it.

The story was in error to the extent that Washington said it applied to "about 4,000 Indians". A more accurate figure would have been "4,000 families." Census figures say there are 27,726 Indians in Robeson county, and the bill applies to others in surrounding counties.

If the bill passes the Senate it will be law. The House and the N.C. Assembly have already approved the name for the people.

[From the Robesonian (NC), Apr. 26, 1956]

INDIAN BILL GETS COMMITTEE OK

WASHINGTON.—The bill introduced by F. Estel Carlyle of Lumberton to make the name of Robeson county Indians the "Lumbee Indians" has passed yet another hurdle in the U.S. Senate.

An Interior subcommittee on Indian Affairs reported favorably on the bill which applies to Robeson and adjoining counties. The action followed the appearance of Senators W. Kerr Scott and Sam J. Ervin, urging its approval.

Rep. Carlyle introduced the bill and it has already passed the House. Previously, the Indians had voted 2,189 to 35 for the name change in 1951, and in 1953, the N.C. General Asembly gave the tribe its designation as Lumbee Indians.

[From the Pembroke Progress, May 17, 1956]

LUMBEE INDIAN BILL APPROVED

A bill which would designate about 4,000 Indians of Robeson and adjoining counties in North as Lumbee Indians was approved Tuesday by the Senate Interior Committee, it was reported from Washington this week.

Most of the Indians concerned are farmers and businessmen who live along the Lumbee River.

The House of Representatives passed bill was amended by the committee to provide that the bill would not entitle the Indians to any federal services from the Bureau of Indian Affairs.

[From the Robesonian (NC), May 22, 1956]

PRESIDENT RECEIVES LUMBEE INDIAN BILL

WASHINGTON.—President Eisenhower has received a bill to allow Indians in and around Robeson County, North Carolina to be known as the Lumbee Indians of North Carolina.

The bill, which was sent to the White House after passage by the Senate, would apply to Indians, who are descendants of the large tribe which once inhabited land around the Lumbee River. The Indians now living along the river are mostly farmers and businessmen.

The bill said, "These people are naturally and understandably proud of their heritage and are desirous of establishing their social status and preserving their racial history."

[From the Pembroke Progress, May 24, 1956]

IKE HAS LUMBEE BILL

President Eisenhower received this week a bill to allow about 4,000 Indians in North Carolina to be known as the Lumbee Indians.

The bill, which was sent to the White House after passage by the Senate would apply to Indians now living in Robeson County, who

are descendants of the large and prosperous tribe which once inhabited land around the Lumbee River. The Indians now living along the river are mostly farmers and businessmen.

The bill said, "These people are naturally and understandably proud of their heritage and are desirous of establishing their social status and preserving their racial history."

[From the Robesonian (NC), May 28, 1956]

INDIAN BILL STRIKES SNAG

The bill to rename Indians of Robeson county the Lumbee Indians of North Carolina struck a snag in Washington last week, but will probably be signed by the President this week.

The bill was passed by the House of Representatives under Congressman Ertel Carlyle's sponsorship It then went to the Senate and was amended to exclude the Lumbee from any federal benefits which apply to Indians on reservations and was sent to the President for signature.

But the bill had not been sent back to the House for its concurrence in the amendment. The House did concur Friday, and the bill is now ready for the President.

WELLESLEY COLLEGE,
DEPARTMENT OF ANTHROPOLOGY,
Wellesley, MA, September 25, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Senate Select Committee on Indian Affairs,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR INOUYE: The history of the Lumbee tribe's relationship with the federal government has centered on the desires of the tribe to receive federal assistance, particularly in the area of education. This, in turn, has led to efforts to achieve federal recognition through congressional acknowledgment of the tribe's name. The tribe's efforts to clarify its status vis a vis the federal government are the subject of this letter.

Until the 1880's, the tribe had little contact with the federal government. In 1885 tribal leaders petitioned the legislature of North Carolina, through their legislator and friend Hamilton McMillan, for state recognition and assistance in establishing an all-Indian school system. The required legislation was passed in 1885, recognizing the tribe, giving it the name "Croatan," and establishing a separate Indian school system. Two years later, the tribe petitioned the legislature for assistance in establishing a teacher's training institution. The following year, 1888, the tribe made its first request to Congress for educational assistance.

The tribal leaders waited two years before receiving an answer to their request. In 1890, Commissioner of Indian Affairs T.J. Morgan responded to tribal leaders, telling them that because of insufficient funds to educate an estimated 36,000 Indian children already the responsibility of the federal government, "* * * I do not see how I can consistently render any assistance to *the Croatans or any other civilized tribe*" (emphasis added). The implication of Commis-

sioner Morgan's statement is clear; had there been sufficient funds the Lumbee tribe would have been eligible to receive assistance.

The Lumbee tribe continued its efforts to receive federal help. It petitioned Congress in 1895, and had legislation introduced on its behalf by Congressman John D. Bellamy in 1899. Again, in 1905, it petitioned Congress for assistance.

By 1900 the tribe found that the name given it be the North Carolina legislature—Croatan—had been shortened by whites to "Cro," and was being used as a racial slur. Consequently, the tribe asked the legislature to change its name to a more neutral, descriptive one. In 1911, the legislature accommodated the tribe by changing the name to the "Indians of Robeson County." That name did not please some of the tribal members, so in same year, the legislature agreed to another name change, this time to "Cherokee Indians of Robeson County," over the protest of the Eastern Band of Cherokees.

During this period the tribe renewed its efforts to get Congress to provide services and acknowledge its existence. In 1911, Senator Simmons and Congressman Godwin introduced legislation to establish ". . . a school for the Indians of Robeson County, North Carolina." The bill was sent to the Department of the Interior, which directed Charles F. Pierce, Supervisor of Indian Schools, to conduct an investigation. Pierce summarized his findings in an article entitled, "The North Carolina Tribe of Croatan Indians," published in 1913. Pierce had no doubt that the Lumbees were Indian, or that they constituted a tribe. Nor did he question the usefulness of federal assistance. His objection was based solely on ". . . the avowed policy of the government to require the states having an Indian population to assume the burden and responsibility for their education, so far as possible."

Despite Pierce's position, the bill passed the Senate and was sent to the House of Representatives, where hearings were held. After the hearings, the chairman of the committee determined that the bill was not necessary, since the Lumbees were eligible to attend the federal Indian boarding schools.

Undaunted, Senator Simmons and Congressman Godwin submitted legislation, chainging the tribe's name to conform with the state designation, and re-introduced the bill to fund a school for the Lumbee tribe. On April 28, 1914, the Senate passed Resolution 344 calling for an investigation into the status and conditions of the Indians of Robeson and adjoining counties. During the summer of 1914 Special Indian Agent O.M. McPherson visited Robeson County, completing his report before the end of the year. In it he rejected the argument that the tribe was of Cherokee origins, but was willing to accept ". . . that there was some degree of amalgamation between the Indians residing on the Lumbee River and the Cheraws, who were their nerest neighbors." He found that the tribal members were eligible to attend the federal Indian schools, but doubted that those schools would be of value because of their limited curriculum. He recommended that if Congress chose to fund a school, it should stress agricultural and mechanical skills.

The entrance of the United States into World War I delayed any further efforts by the tribe to gain federal recognition and assistance, but during the 1920's the tribe renewed its efforts to get Con-

gress to consider its status. In 1924, Congressman L.R. Varser and Senator Simmons introduced legislation seeking to change the tribe's name to "Cherokee Indians of Robeson and adjoining counties," and providing educational assistance. Initially the Secretary of the Interior favored the bill, but later changed his position and the legislation died.

The tribe renewed its efforts in the 1930's, seeking both assistance and recognition. In 1932, Senator Josiah W. Bailey submitted a bill to recognize the tribe as "Cherokee Indians," but this legislation failed. The following year the tribe made another effort, this time designating themselves as "Cheraw Indians." The change in name was the result of the research of the eminent anthropologist and historian, John R. Swanton, who, after reviewing the available evidence, concluded that the Lumbee tribe descended from ". . . certain Siouan tribes of which the most prominent were the Cheraw and Keyauwee . . ." However, the name "Cheraw" provoked a split within the tribe, with one group led by Joe Brooks and James Chavis favoring it because it would make possible the tribe's access to much needed resources, while another group led by D.F. Lowry, opposed it, fearing that it would lead to a loss of tribal control over the Indian schools. As a result, the bill failed.

After the passage of the Indian Reorganization Act (IRA) in 1934, the Brooks group renewed its efforts to achieve recognition. Guided by recommendations from Assistant Solicitor Felix Cohen, tribal leaders organized an effort to meet the criteria for a federal charter as provided in the act. They also set about establishing a land base for the tribal members. The remainder of the decade was spent on these two endeavors, and although they were unsuccessful in securing a federal charter, they were able to get land set aside for tribal members.

Following World War II, D.F. Lowry organized a group to advance a broad spectrum of social and political programs. One of its objects was to change the tribe's name. It must be kept in mind that the tribe had previously received recognition from the State of North Carolina. For tribal leaders, official recognition of their name was recognition of their tribal existence. Lowry and his supporters sought a name that had some neutrality about it; one that would avoid criticism from other Indian tribes, and would allow the tribe to keep control of its education system. Lowry chose the name "Lumbee tribe."

At first, the state legislature refused to adopt the change, insisting that the tribe hold a referendum. On February 2, 1952, the tribal members voted. The results were 2,109 in favor and 35 opposed. These results were conveyed to the legislature which enacted legislation stating that the tribe ". . . shall be known and designated as Lumbee Indians." In 1953, Congressman Carlyle introduced legislation to recognize the Lumbee Indians of North Carolina. The language of his bill was essentially the same as that approved by the legislature. After opposition from the Department of the Interior surfaced, the language of the legislation was altered to include the restrictions concerning the provision of services, but it included the same wording as found in the state law ". . . shall . . . be known and designated as Lumbee Indians of North Carolina . . ."

The purpose of the state legislation had been to change the tribe's name. Since the same language appeared in the federal legislation, from the tribe's point of view, it provided the long sought recognition of the tribe. Certainly, individuals did not need either state or federal permission to call themselves Lumbee Indians. By the state act the Lumbee tribe ceased to be referred to as "Indians of Robeson and adjoining counties," and became the Lumbee Indian Tribe. From the tribe's perspective, the federal act entitled "An Act relating to the Lumbee Indians of North Carolina" recognized its existence. No other explanation makes sense.

Very truly yours,

JACK CAMPIS, Ph.D.

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